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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,457	06/27/2003	Jay Daulton	AB-233U5	6594

23845 7590 01/26/2006

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EXAMINER

SAVAGE, JASON L

ART UNIT	PAPER NUMBER
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.1775

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/609,457

Applicant(s)

DAULTON, JAY

Examiner

Jason L. Savage

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-8,10,12 and 13 is/are rejected.
- 7) ☒ Claim(s) 5 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawings were received on 11-4-05. These drawings are approved.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4, 6-8, 10 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byers et al. (US 4,991,582) in view of Schulman et al. (US 6,208,894) and in further view of Whitehurst et al. (US 6,901,296).

Byers teaches a braze assembly comprising a metal member **18** including an exterior flange **64** of the metal member, a braze and a ceramic member **14** including a formed end **26**, wherein the formed end of the ceramic member **14** adjoins the inner surface of the exterior flange **64** and is brazed to the metal member with the braze material (Figure 9 and col. 7, ln. 54-68). Byers further teaches the braze is a titanium and nickel alloy (col. 4, ln. 66 – col. 5, ln. 9).

Byers is silent to the ceramic member being substantially close-ended which has a metal end cap which completely closes the ceramic.

Schulman teaches an implantable device (col. 1, ln. 13-21) which comprises a braze assembly including a metal member **264** brazed to a ceramic member **260** (col.

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12, ln. 41-67 and Figure 10A). Schulman further teaches that the ceramic member **260** is completely closed by an end cap electrode **112a** (col. 12, ln. 41-67 and Figure 10A).

It would have been within the purview of one of ordinary skill in the art to have recognized that the metal flange containing, self-jigging, connection supporting microstimulator structure of Byers could have been used in a wide variety of known microstimulator devices with a reasonable expectation of success. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the brazed assembly structure of Byers as the composite assembly in the microstimulator of Schulman in order to have formed a composite assembly which supports a firm connection between the ceramic and metal members.

However, the prior art of Byers in view of Schulman is silent to the ceramic member being substantially close-ended.

Whitehurst teaches an implantable device comprising a capsule member **152** which is substantially close ended and has an end cap electrode **158** which completely closes the capsule member **152** (figure 3 and col. 8, ln. 58-67). Whitehurst further teaches that the capsule member **152** may be formed from a wide variety of materials including ceramics and that the end cap electrodes **158** are metal (col. 10, ln. 8-18).

It would have been within the purview of one of ordinary skill in the art to have used any known end cap and ceramic member structure for the composite device of Byers as modified by Schulman including the end cap structure of Whitehurst with a reasonable expectation of success. Absent a teaching of the criticality or showing of unexpected results from the ceramic member being substantially closed and having the

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metal end cap which completely closes the ceramic member, it would not provide a patentable distinction over the prior art.

Regarding claims 2 and 8, Byers teaches the assembly is suitable for use in hermetically sealed housing shells for microstimulators (col. 1, ln. 7-18).

Regarding claims 4 and 10, Schulman and Whitehurst both teach that the metal end cap which completely closes the ceramic member is an electrode.

Regarding claims 6-7 and 12-13, Byers teaches the exterior flange **64** forms a step at the end of the metal member against which the formed end of the ceramic member may be received (Figure 9). Byers further teaches the surface area between the members is capable of receiving an adequate amount of braze material to form a strong braze bond (Figure 9 and col. 7, ln. 64-67). Byers also teaches the exterior flange **64** provides support to the braze assembly. Although Byers does not explicitly recite the support provided is lateral support, the flange structure of Byers would have as much lateral support the assembly claimed by Applicant since Byers teaches the same structure which is claimed.

Allowable Subject Matter

Claims 5 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments


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Applicant's arguments with respect to claims 1-2, 4, 6-8, 10 and 12-13 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason L. Savage whose telephone number is 571-272-1542. The examiner can normally be reached on M-F 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on 571-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jason Savage
1-23-06


JENNIFER MC
PRIMARY EXA:
1/23/06